

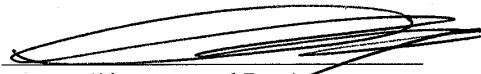
**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT: Joe Petner  
SERIAL NO.: 86/064,685  
FILED: September 13, 2013  
MARK VAPORJOES  
EXAMINER: Brendon McCauley  
LAW OFFICE: 114

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Lawrence D. Mandel  
(Name of Person Signing Certificate)

  
(Signature and Date)

COMMISSIONER FOR TRADEMARKS  
P.O. BOX 1451  
ALEXANDRIA, VA 22313-1451

Dear Sir:

**REQUEST FOR RECONSIDERATION**

**RESPONSE**

This is in response to the Office Action with a mailing date of August 25, 2014.

**REMARKS**

The Examining Attorney has made refusal final and attached copies of printouts from various web pages which show that "vapor" is a characteristic of electronic cigarettes and that "joe" is used as slang for cigarettes.



**02-27-2015**

U.S. Patent & TMO's/TM Mail Rpt Dt. #11

The applicant does not dispute that the first portion of the mark VAPORJOES describes a characteristic of the goods (vapor). Also, for purposes of this Response and Request for Reconsideration only, the applicant will assume that “joe” is commonly used as slang for “cigarette.” Nevertheless, Joe is also the first name of the applicant, among other meanings. In analyzing the legal effect of a mark which has a double meaning, the applicant believes that the Examining Attorney has overlooked the fact that VAPORJOES has at least two possible meanings, both of which relate to the services described in the application.

“VAPORJOES” may mean cigarettes which have a vapor component or characteristic to them. However, “VAPORJOES” also refers to the applicant who provides the services described in the application. In fact, “Vapor Joe” is a nickname for the applicant, Joe Petner. Mr. Petner’s formal written consent to register his nickname is submitted herewith.

Because the word “JOES” has a double meaning, it cannot be considered merely descriptive because “merely” in this context is equivalent to “only”. In re Colonial Stores, Inc., 157 U.S.P.Q. 382 (C.C.P.A 1968).

“Under the present Lanham Act, a term is merely descriptive if it possesses no significance or meaning other than to bring to mind immediately and directly a particular or specific characteristic, feature or aspect of a product or service to which the mark is applied.”

Aetna Health Care Systems v. Health Care Choice, 231 USPQ 614 (N.D. Ok. 1986) citing, In re Colonial Stores, Inc., 157 USPQ 382, 383 (CCPA 1968) and In re Quik-Print Copy Shop, Inc., 205 USPQ 505, 507 (CCPA 1980).

In the Aetna case, the mark CHOICE was found to have a double meaning in the English language. When used as a noun it means option, election, pick or determination. As an adjective it means of high quality, superior or best. 231 USPQ at 620. Therefore, CHOICE, was found not be

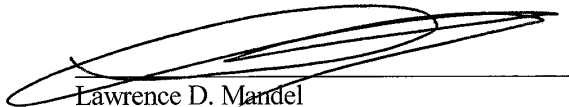
merely descriptive of a health maintenance organization but only suggestive of several possible and variant aspects. Id. At 624.

In Henry Siegel Co. v. M&R International Mfg. Co., 4 USPQ 2d 1154 (TTAB 1987), the mark CHIC was found to be suggestive and not merely descriptive when used in connection with women's jeans, even though the Board recognized that the term CHIC has a descriptive significance as applied to clothing, i.e., stylish, elegant. However, CHIC also can be regarded as a misspelling of "chick" which means a chicken or any young bird, a term of endearment for a child or a slang term for a young woman. The Board reasoned that because CHIC had a double meaning, it could not be merely descriptive within the context of Section 2(e)(1) of the Trademark Act.

In the present case, the mark is VAPORJOES and the services are "on-line journals, namely, blogs featuring information about electronic cigarettes." Although VAPORJOES could possibly be construed to refer to cigarettes using vapor, it also, and more obviously, refers to the writer and proponent of the blogs, Joe Petner, also known as "Vapor Joe." Thus, VAPORJOES fits clearly into the category of marks referred to in the Aetna and Henry Siegel cases referred to above. VAPORJOES has a double meaning in connection with blogs featuring information about electronic cigarettes and, therefore, cannot be considered merely descriptive within the context of Section 2(e)(1) of the Trademark Act.

In view of the above, the applicant respectfully requests that the refusal of registration be withdrawn and the application be approved for publication.

Respectfully submitted,



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Dated: February 19, 2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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SERIAL NO.: 86/064,685  
FILED: September 13, 2013  
MARK VAPOR JOES  
EXAMINER: Brendan McCauley  
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**CONSENT TO REGISTER**

I consent to the use and registration of my nickname, Vapor Joe as a trademark and/or service mark with the United States Patent and Trademark Office.

By: Joe Petner  
Name: Joseph Petner

Dated: 2-22-2015